

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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JUAN CURIEL-SALAZAR

ORDER

Petitioner,

Cr. No. 2:05-0164 WBS

v.

Civ. No. 2:06-1159 WBS

UNITED STATES OF AMERICA,

Respondent.

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Defendant Juan Curiel-Salazar has filed a petition for relief pursuant to 28 U.S.C. § 2255. The United States Attorney has filed his opposition to the petition; and defendant has now filed his reply.

The sole basis of defendant's petition is that his court appointed counsel, Federal Defender Daniel J. Broderick, rendered ineffective assistance by failing to file notice of appeal on his behalf as directed by defendant. However, in his written plea agreement defendant expressly waived his right to appeal, with the following language:

The defendant understands that the law gives him a right to appeal his conviction and sentence. He agrees as part of his plea, however, to freely, knowingly and voluntarily give up the right to appeal any aspect of his conviction or sentence.

1 The defendant also gives up any right he may have  
2 to bring a post-conviction attack on any aspect of  
3 his conviction or sentence. He specifically  
4 agrees not to file a motion under 28 U.S.C. § 2255  
or § 2241 attacking any aspect of his conviction  
or sentence.

5 Further, during his Rule 11 colloquy with the court, defendant  
6 specifically acknowledged that he understood the agreement and  
7 voluntarily agreed to the waiver, as follows:

8 THE COURT: In your written plea agreement, you're also  
9 giving up your right to appeal from your conviction or  
10 your sentence, and you're giving up your right to  
collaterally attack your conviction or your sentence. Do  
you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Having all that in mind, do you wish to waive  
13 all those rights at this time and to enter a plea of  
guilty?

14 THE DEFENDANT: Yes.

15 Such waivers are enforceable. See United States v. Abarca, 985  
16 F.2d 1012 (9th Cir. 1993).

17 Defendant received the full benefit of everything  
18 promised in his plea agreement. His allegation that he  
19 requested Mr. Broderick to file notice of appeal on his behalf  
20 is disputed in this case. Nevertheless, even assuming that  
21 defendant did make such a request of Mr. Broderick, because  
22 defendant had validly waived his right to appeal from his  
23 conviction or sentence, it follows that his counsel could not  
24 have rendered ineffective assistance by failing to file notice  
25 of appeal. Defendant's petition must accordingly be denied.

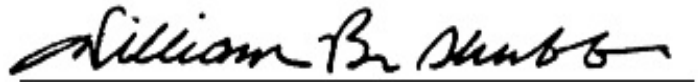
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1 IT IS THEREFORE ORDERED that defendant's petition for  
2 relief pursuant to 28 U.S.C. § 2255 be, and the same hereby is,  
3 DENIED.

4 DATED: July 26, 2006

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7 WILLIAM B. SHUBB  
8 UNITED STATES DISTRICT JUDGE  
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